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January 21, 2022

VIA E-ECF

Honorable Sarah L. Cave
United States Magistrate Judge
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Monterey Bay Military Housing, LLC, et al. v. Ambac Assurance Corporation, et al.*, No. 19-CV-09193-PGG-SLC (S.D.N.Y.)

Dear Judge Cave:

We write on behalf of Defendant Ambac Assurance Corporation (“Ambac”), pursuant to the Court’s Order that the Parties may submit a letter regarding outstanding discovery disputes in advance of the January 24, 2022 discovery conference. (*See* Jan. 6, 2022 Conf. Tr. 48:2-10.)

On January 19, 2022, counsel for Ambac and Plaintiffs met via Zoom and conferred about the remaining discovery disputes. The parties continue to work together toward resolving their disputes, including those raised by Plaintiffs regarding Ambac’s search terms and discovery relating to Non-Plaintiff Projects. Nonetheless, in view of today’s substantial completion deadline, we write to bring to the Court’s attention outstanding issues concerning discovery relating to Ambac’s unclean hands affirmative defense and Plaintiffs’ failure to produce documents they have previously agreed to produce, despite today’s deadline.

I. Unclean Hands Discovery

Over five months ago, the Court ordered Plaintiffs to explore what summary documents exist and what productions were previously made in response to investigations and litigation related to property maintenance issues and to meet and confer with Defendants regarding a reasonable scope of production. *See* Aug. 12, 2021 Hr’g Tr. at 48:14-49:3. In the most recent court conference, the Court further directed the Plaintiffs to produce “summary documents that

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were provided to Congress or the Department of Justice and any consent decrees or guilty pleas or anything like that that was entered” and to “disclose to the defendants if there are Bates-numbered productions or previously assembled productions for any of the projects that exist.” Jan. 6, 2022 Conf. Tr. 36:9-37:2. Today is the deadline for substantial completion of document production, and yet Plaintiffs have made no tangible progress toward complying with the Court’s order. To Defendants’ knowledge, they have received to date no document responsive to the Court’s order.¹

II. Substantial Completion of Document Production

During recent letters and telephonic meet-and-confers, Plaintiffs have taken the position that their document production is already substantially complete. In light of the amount of document discovery that remains outstanding from Plaintiffs, however, we disagree. *First*, as explained above, Plaintiffs have made no progress toward producing documents related to Defendants’ unclean hands defenses. *Second*, Plaintiffs have committed to running additional search terms and reviewing approximately 70,000 documents to resolve a dispute regarding search terms that Ambac first raised in July 2020—a dispute that Plaintiffs failed to address until November 2021. It is unclear when this additional review and production will be complete. *Third*, Plaintiffs informed Ambac on January 19, 2021 that they have located several gigabytes of data for Bruce Robinson, former CEO of Balfour and a custodian Ambac requested as early as July of 2020. Plaintiffs are apparently in the beginning stages of collecting Mr. Robinson’s documents, with no commitment regarding when their collection, review, and production of his documents will be complete.

Based on the foregoing, it is clear that Plaintiffs have not substantially completed their document production.

We look forward to discussing these matters with the Court at the next conference scheduled for Monday, January 24, 2022.

Respectfully submitted,

/s/ Rachel E. Epstein

Rachel E. Epstein

cc: All Counsel

¹ Defendants just received a production from Plaintiffs but have not yet had the chance to review it.